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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

JOSE JESUS CHAVARIN,

Defendant and Appellant.

D059218

(Super. Ct. No. JCF24274)

APPEAL from a judgment of the Superior Court of Imperial County, William D. Lehman, Judge. Affirmed in part; reversed in part.

A jury convicted Jose Chavarin of forgery (Pen. Code,¹ § 476; counts 1, 2), possessing a controlled substance for sale (Health & Saf. Code, § 11378; count 4), and felony child endangerment (§273a, subd. (a)), which the court reduced to a misdemeanor (§ 273a, subd. (b); count 3). Chavarin appeals, challenging only the sufficiency of the

¹ All statutory references are to the Penal Code unless otherwise specified.

evidence to support his misdemeanor conviction for child endangerment. We reverse the judgment for this count only.

FACTS

Because Chavarin challenges only the misdemeanor child endangerment conviction on appeal, the facts relating to the other charges will be omitted.

On January 23, 2009 officers executed a search warrant at a residence and found Chavarin, a woman, and their three or four-year-old daughter watching television in the living room. On the couch in the living room, the officers found a medicine container with a child-proof cap that contained 13 bindles or individually packaged pieces of methamphetamine, amounting to about 30 doses. The container was not open, the child was not playing with the contents of the bottle, and she was not playing with any paraphernalia when the officers were in the house. On a cabinet shelf in one of the bedrooms, officers found a bulbous glass pipe for smoking methamphetamine that contained methamphetamine residue inside. On a table in the kitchen, the officers found a digital scale for weighing methamphetamine. The scale contained a snort straw and the officers did not find any drugs on the scale. The officers also found pieces of plastic located throughout the house that were tear-offs from bigger pieces of packaging for methamphetamine.

DISCUSSION

Chavarin contends there was insufficient evidence to prove that he intentionally placed his child in danger or that the circumstances in the residence posed any danger to

her. Thus, he asserts, the People failed to prove misdemeanor child endangerment under section 273a, subdivision (b).

When reviewing the sufficiency of the evidence on appeal, we determine whether substantial evidence supports the trier of fact's findings, and we do not consider whether the evidence proves guilt beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 576.) We review the entire record favorably to the judgment to determine whether there is substantial evidence that is reasonable, credible and of solid value to allow a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. (*Id.* at p. 578.) In this regard, we accord due deference to the trier of fact and may not substitute our evaluation of a witness's credibility for that of the fact finder. (*People v. Jones* (1990) 51 Cal.3d 294, 314.)

Section 273a, subdivision (b) provides: "Any person who . . . having the care or custody of any child . . . willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor." Whether Chavarin had care or custody of his daughter was not disputed.

In *People v. Little* (2004) 115 Cal.App.4th 766, 772, the court held the evidence was sufficient to support the defendant's conviction under section 273a, subdivision (b). Officers entered a residence to conduct a search and found glass pipes used for smoking drugs, an electronic scale, packaging material and 70 grams of methamphetamine. (*Little, supra*, at p. 770.) The residence smelled of animal feces and rotten food and was covered in dirt, cobwebs, insects and cockroaches. (*Ibid.*) When the officers located the

defendant's infant daughter, she was lying unsecured in the middle of a bed without a railing or restraints to prevent her from crawling or rolling off the bed. (*Ibid.*) The court reasoned these circumstances showed the defendant willfully engaged in conduct that placed his child in danger. (*Id.* at p. 772.)

Although the search of Chavarin's residence revealed similar items such as a pipe, a scale, packaging material and some methamphetamine, the circumstances inside the residence do not show Chavarin willfully placed his daughter in danger. The record does not include any descriptions of unsanitary living conditions that posed a threat to the child's health and safety and the child was not unsupervised and in a potentially dangerous situation when the officers entered the home.

In *People v. Perez* (2008) 164 Cal.App.4th 1462, 1465, the court held the evidence was sufficient to support the defendant's conviction for endangering the health of a child within the meaning of section 273a, subdivision (b). When officers searched a home and yard they found six bindles of heroin in a hanging plant, four additional bindles and a syringe filled with liquid in an unlocked drawer of a chess set on an end table and another syringe filled with liquid on top of a short end table in the entry room of the residence. (*Perez, supra*, at p. 1466.) All of these items were within the reach of a four-year-old child who visited the residence. On appeal, the court held a jury could have reasonably found that leaving drugs and drug paraphernalia in plain view or within easy access of a four-year-old child was an unreasonable safety risk. (*Id.* at p. 1473.)

Here, although officers discovered bindles containing drugs in Chavarin's residence, the drugs and paraphernalia were not accessible to his child. The bindles were stored in a medicine container with a child-proof cap and when the officers arrived, the child did not have possession of the container or its contents. The pipe was not located in the child's bedroom where she could have access to it and she was not playing with the paraphernalia. Additionally, the child did not have access to drugs in the kitchen because the officers did not find drugs on the scale located there.

Even though the items found in Chavarin's residence included illegal drugs and indicated drug sales, there was not sufficient evidence to show the drugs were accessible to the child or that the physical surroundings were dangerous to her health and safety. She was not unsupervised and the drugs were discovered in a container with a child-proof cap. Thus, Chavarin's conduct did not amount to "willfully causing or permitting the child to be placed in a situation where her person or health may be endangered" within the meaning of section 273a, subdivision (b).

DISPOSITION

The judgment as to count 3 is reversed. In all other respects, the judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

IRION, J.